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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,846	12/03/2001	Khuy V. Nguyen	2000.83	1022
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HAMMER & HANF, PC 3125 SPRINGBANK LANE SUITE G CHARLOTTE, NC 28226				
		EXAMINER CHANG, VICTOR S		
		ART UNIT 1794		
		PAPER NUMBER PAPER		
		MAIL DATE 05/20/2008		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/005,846	<b>Applicant(s)</b> NGUYEN ET AL.
	<b>Examiner</b> Victor S. Chang	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on **21 January 2008**.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) **1-5 and 9-16** is/are pending in the application.  
 4a) Of the above claim(s) **1-5 and 12-16** is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) **9-11** is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/136/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Introduction***

1. Applicants' amendments and remarks filed on 1/21/2008 have been entered. Claim 1 has been amended. Claims 6-8 have been cancelled. New claims 12-16 have been entered. Claims 1-5 and 9-16 are pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. In response to the amendments, the grounds of rejection have been updated as set forth below. Rejections not maintained are withdrawn.

***Election/Restrictions***

4. Applicants' response filed 2/14/2008 to election/restriction requirement mailed 2/11/2008 has been carefully reviewed, but not entered. A careful review shows that the original claims filed 12/3/2001 and amended claims filed 9/22/2003 contain claims 1-11, in which the method claims 1-8 merely recite nominal method step "providing a microporous sheet", it is taken as mirroring the product claims 9-11 and all the claims were examined together, as product claims, without restriction requirement. The scope of the claims 1-11 in the Appeal Brief filed 6/13/2005 remained the same as the amended claims filed 9/22/2003. Appeal Board's decision mailed 9/11/2007 has affirmed in part the Examiner's Answer mailed 6/20/2007. Claims 1-8 are affirmed. Claims 9-11 are reversed.

However, in the amendment after Appeal filed 1/28/2008, the independent claim 1 has been newly amended to recite specific blending and forming method steps, so as the newly submitted claims 12-16. Clearly, amended method claims 1-5 and newly added claims 12-16 are directed to an invention that is independent or distinct from the invention originally claimed, as evidenced by applicants' response filed 2/14/2008 without traverse, and also for the reasons stated in the election/restriction requirement mailed 2/11/2008.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, the election/restriction requirement mailed 2/11/2008 is withdrawn, because it would improperly require the examiner to examine two restrictable independent inventions in one application. Further, claims 1-5 and 12-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Claims 9-11 are active.

*Rejections Based on Prior Art*

5. Claims 9-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zimmerman et al. [US 3679540], and evidenced by Kondo [JP 10-017694 computer translation] and applicants' admission.

Zimmerman's invention relates to an open celled microporous film [col. 1, ll. 11-51]. The process for preparing the open-celled microporous polymer films from non-porous, crystalline, elastic polymer starting films, includes steps of: 1) cold stretching, i.e., cold drawing, the elastic film until porous surface regions or areas which are elongated normal or perpendicular

to the stretch direction are formed; 2) hot stretching, i.e., hot drawing, the cold stretched film until fibrils and pores or open cells which are elongated parallel to the stretch direction are formed; and 3) heating or heat setting the resulting porous film under tension, i.e., at substantially constant length, to impart stability to the film [col. 2, lines 40-50]. A significant group of polymers, i.e., synthetic resinous materials, to which this invention may be applied are the olefin polymers, e.g., polyethylene, polypropylene, etc., or with minor amounts of other olefins, e.g., copolymers of propylene and ethylene [col. 4, ll. 54-61].

For claims 9-11, since Zimmerman's microporous membrane is open celled, it reads on the term "diffusion membrane". Since Zimmerman teaches that a minor amounts of copolymers of propylene and ethylene can be included, a workable amount less than 10 weight percent is reasonably deemed to be either anticipated or obvious provided by practicing the invention of prior art, motivated by the desire to obtain the beneficial effects of including the small amount of ethylene-propylene copolymer, as recognized in the Board's Decision [page 9] that while Kondo does not disclose the exact effect one of ordinary skill in the art would expect to obtain from adding EPR (copolymer of propylene and ethylene) to the polyethylene, it is evidenced from the context of the disclosure within the reference that the effect was known to those of ordinary skill in the art, and the Board also recognized that, in fact, Appellants' own specification indicates that elastomers were known to improve the mechanical strength of polyethylene films [specification, pp. 3, ll. 1-8]. Finally, since Zimmerman's stretching process is solvent free, it reads on the term "dry stretched".

***Response to Arguments***

6. Applicants argue at Remarks page 7 that

“No where in Zimmerman is ethylene-propylene rubber or ethylene-propylene-diene terpolymer rubber disclosed. The Examiner claims that in column 4, lines 54- 61 teach minor amounts of other olefins, e.g. copolymers of propylene and ethylene. However in a rejection on 35 USC § 102(b) the law is clear, the reference must therefore provide a certain degree of precision with respect to the specific compound claimed.”

However, one of ordinary skill in the art would instantly understand that Zimmerman’s “copolymers of propylene and ethylene” read on the term “ethylene-propylene rubber”, because they are of the same chemistry, including inherent properties to the same chemistry.

Applicants argue at page 9 that

“Zimmerman teaches away from using classical elastomers such as natural and synthetic rubber, see column 4, lines 22-53. When a reference teaches away from using a material it is neither anticipated nor obvious.”

However, Zimmerman teaches at col. 4, ll. 22-53 that suitable starting elastic films for forming the microporous films should be “non-classical” elastomers, which is differentiated from formed from classical elastomers such as natural and synthetic rubbers. Since Zimmerman specifically teaches that useful synthetic resinous materials are the olefin polymers, e.g., polyethylene, polypropylene, etc., or with minor amounts of other olefins, e.g., copolymers of propylene and ethylene, the examiner maintains that Zimmerman teaches the composition of useful materials of the claimed invention. Nowhere has Zimmerman taught that the copolymers of propylene and ethylene are used as the main components of the starting elastic films. Applicants’ argument is misplaced.

Similarly, applicants argue at pages 10-12 that

“In the instant case the only reference which teaches a dry stretch process also teaches that one should use a polymer with a significant degree of crystallinity. The examiner is arguing that this could be combined with references that take about adding classical elastic materials for a solvent extraction microporous sheet (Kondo) or adding classical

elastomers to non-\- porous sheets as referred to in the background of the invention. Zimmerman clearly teaches away from the present invention. Teaching away from the art is *per se* demonstration of a lack of *prima facie* obviousness."

However, as set forth above, applicants are clearly taking Zimmermann's teaching out of context, and again ignore that nowhere has Zimmermann taught that the copolymers of propylene and ethylene are used as the main components of the starting elastic films.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 7:00 am - 5:00 pm, Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor S Chang/  
Primary Examiner, Art Unit 1794